

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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KYLENE HYLTON, as Administratrix of the
goods, chattels and credits that were of
KAYLA REYES, deceased, and
KYLENE HYLTON, individually,

Plaintiff,

- against -

NEW YORK METHODIST HOSPITAL,
CHRIST HOSPITAL,
ANNETTE VISCONTI, M.D.,
RYAN BURK, M.D.,
VIJAY AKKAPEDDI, M.D.,

Defendants.

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MAUSKOPF, United States District Judge.

ORDER
08-CV-3956 (RRM)(MDG)

By motions respectively filed February 9th and 11th, 2010, Plaintiff Kylen Hylton, on her own behalf and on behalf of deceased infant Kayla Reyes, moved for approval of a partial settlement as between Plaintiff and Defendants New York Methodist Hospital, Annette Visconti, M.D., and Ryan Burke, M.D. (Docket Nos. 30 and 31). On February 9, 2010, those motions were respectfully referred to the Honorable Marylin Go for report and recommendation. This Court is now in receipt of Magistrate Judge Go's March 30, 2010 Report and Recommendation (see, docket no. 38) (the "R&R"), which recommends final approval of the proposed compromise, including approval of attorney's fees and costs, as fair and reasonable, in the manner required by section 5-4.6(a) of the New York Estates, Powers and Trusts Law, section 474-a of the New York Judiciary Law, and Local Civil Rule 83.2. No objections have been filed.

In addition to the proposed compromise and the R&R, the Court is in receipt of Plaintiff's April 23, 2010 letter motion (docket no. 39), seeking among other things, to voluntarily dismiss the action without prejudice as against the remaining co-Defendants, Christ Hospital and Vijay Akkapeddi, M.D.¹

Pursuant to 28 U.S.C. § 636(b) and Federal Rule of Civil Procedure 72, the Court has reviewed the R&R for clear error and, finding none, concurs with the R&R in its entirety. *See Covey v. Simonton*, 481 F. Supp. 2d 224, 226 (E.D.N.Y. 2007). Thus, the legal conclusions and factual findings set forth in the R&R are hereby ADOPTED. In addition, Plaintiff's motion to dismiss this action without prejudice as against the remaining co-Defendants is GRANTED. For these reasons, it is hereby:

ORDERED, that KYLENE HYLTON, as Administratrix of the goods, chattels and credits that were of KAYLA REYES, deceased, and KYLENE HYLTON, individually, be and hereby is authorized and empowered to settle and compromise all claims and causes of action arising out of the death of KAYLA REYES, as against the co-Defendants NEW YORK METHODIST HOSPITAL, ANNETTE VIZCONTI, M.D., and RYAN BURKE, M.D., only, in the sum of Three-Hundred-Thousand dollars (\$300,000); and it is further

ORDERED, that this action be discontinued with prejudice as against NEW YORK METHODIST HOSPITAL, ANNETTE VIZCONTI, M.D., and RYAN BURKE, M.D.; and it is further

ORDERED, that this action be dismissed without prejudice as against the non-settling co-Defendants herein, namely CHRIST HOSPITAL and VIJAY AKKAPEDDI; and it is further

¹ Claims against Defendant Yangyu Steven Shih, initially sued as "John" Shih, were dismissed by this Court's February 17, 2010 Order. (Docket No. 35).

ORDERED, that out of the aforesaid partial settlement of Three Hundred Thousand Dollars (\$300,000), there shall be paid to Kerner & Kerner, attorneys for the Plaintiff, the sum of \$87,028.86 as payment for legal fees agreed upon and earned in connection with the prosecution of this action to date; and it is further

ORDERED, that out of the allowed claim there shall be paid to Kerner & Kerner, the sum of \$1,884.55, as and for reimbursement of the costs and disbursements incurred in connection with the prosecution of this action to date; and it is further

ORDERED, that the net balance of the aforesaid settlement, to wit, the sum of \$211,086.59 be made payable to Kerner & Kerner, as escrowees, to be deposited into an interest bearing escrow account at a bank located in the City of New York, until such time as the Surrogates Court of Hudson County, New Jersey authorizes the manner in which the proceeds of the within settlement should be distributed, in accordance with applicable law.

CONCLUSION

In accordance with the above ORDER, Magistrate Judge Go's R&R (docket no. 38), approving the proposed compromise, including attorneys fees and costs, as set forth in docket nos. 30 and 31, is hereby ADOPTED. This action is therefore dismissed with prejudice as to the settling Defendants, namely NEW YORK METHODIST HOSPITAL, ANN VISCONTI, M.D. and RYAN BURKE, M.D. Moreover, Plaintiff's motion to dismiss this action without prejudice as to the non-settling co-Defendants, namely CHRIST HOSPITAL and VIJAY AKKAPEDDI, M.D. (docket no. 39) is GRANTED.

In light of the above, the Clerk of Court is respectfully directed to close the case.

SO ORDERED.

Dated: Brooklyn, New York
April 26, 2010

s/RRM

ROSLYNN R. MAUSKOPF
United States District Judge